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Appeal from the Circuit Court of Nelson county. Modified and affirmed.

P. R. Massie, S. V. Kemp, for the appellants.

W. K. Allen, C. L. Martin, for the appellee.

INTERSTATE FIRE INSURANCE COMPANY *v.* McFALL.

Richmond, November 21, 1912.

[7 Va. App. 150.]

1. **Equity—Jurisdiction—Contracts—Insurance.**—Where a contract for insurance of a building has been made with an agent of an insurance company, who is authorized to issue and deliver policies, and the amount of the premium agreed upon, to be paid upon issuance and delivery of the policy contracted for, but before the policy is issued the building is destroyed by fire, a court of equity has jurisdiction to enforce payment of the policy at the suit of the assured against the insurance company.

2. **Insurance—Agent—Authority.**—It is within the power of an agent, authorized to solicit risks and to issue and deliver policies of insurance, to give thirty days' time for the payment of a premium.

3. **Idem—Apportionment.**—Where it does not appear that the parties to a contract of insurance contemplated apportionment, and there was a total loss upon what was in substance a single risk, failure to make such apportionment does not invalidate the contract.

4. **Idem—Single Risk.**—Where it appears from the proof that the property insured constitutes a single structure, though it is spoken of as a "store building, warehouse and barn," it is in substance a single risk.

5. **Idem—Recovery—Premium.**—Where it appears that the premium on a policy of insurance contracted for was not paid and a recovery on the policy is allowed, credit should be given for the amount of the premium.

Appeal from Circuit Court of Wise county. Amended and affirmed.

R. W. Withers, Irvine & Morison, for the appellant.

Vicars & Peery, for the appellee.

GROVE *v.* LEMLEY.

Richmond, November 21, 1912.

[7 Va. App. 155.]

1. **Limitations—At Law and in Equity—Mutual Mistake—Fraud.**—In cases of mutual mistake and fraud courts of law and courts of equity, in Virginia, apply different rules with respect to the defense